



**Eric Gonzalez**  
District Attorney

**DISTRICT ATTORNEY  
KINGS COUNTY**

350 JAY STREET  
BROOKLYN, NY 11201-2908  
(718) 250-2000  
WWW.BROOKLYNDA.ORG

**ADITI KUMAR**  
Assistant District Attorney

March 5, 2021

In connection with the above-named case, the People voluntarily provide the following information regarding:

**MOS NAME: JOHN PAUL ZINSER**

**MOS TAX: 958199**

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. Further, the People reserve the right to move in limine to preclude reference to this information, or otherwise to object to its use and/or introduction into evidence.

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**Disclosure # 1:**

BY AN UNPUBLISHED DECISION AND ORDER, DATED JANUARY 17, 2017, IN PEOPLE V. XXX (REDACTED) (SUP. CT., KINGS CTY. IND. NO. 7661/2016), JUSTICE MATTHEW A. SCIARRINO, JR. GRANTED THE DEFENDANT'S SUPPRESSION MOTION FOLLOWING A COMBINED DUNAWAY/HUNTLEY/MAPP HEARING. THE PEOPLE PRESENTED THE TESTIMONY OF MOS JOHNPAUL ZINSER, SHIELD NUMBER 16883, REGARDING THE DETENTION OF THE DEFENDANT, SEARCH OF THE DEFENDANT'S VEHICLE AND RECOVERY OF A FIREARM, AND THE DEFENDANT'S STATEMENT. THE DEFENDANT TESTIFIED ON HIS OWN BEHALF AND ALSO PRESENTED THE TESTIMONY OF HIS MOTHER. THE COURT CREDITED THE TESTIMONY OF THE DEFENDANT AND DID NOT CREDIT THE TESTIMONY OF MOS ZINSER. AS A RESULT, THE COURT CONCLUDED THAT THE PEOPLE HAD FAILED TO SHOW THAT THE SEARCH WAS LAWFUL, AND, ACCORDINGLY, THE COURT SUPPRESSED THE FIREARM AND THE DEFENDANT'S STATEMENT AS FRUIT OF THE POISONOUS TREE.

THE CASE WAS SUBSEQUENTLY DISMISSED. A COPY OF THE DECISION IS ATTACHED HERETO.

**Disclosure # 2:**

THE NYPD ENTERED A DISPOSITION OF A MINOR PROCEDURAL VIOLATION, DATED 05/27/2017, AGAINST MOS ZINSER:

1. MEMOBOOK INCOMPLETE/ IMPROPER
- CASE STATUS: CLOSED ON 08/01/2018

**BASED UPON CCRB DOCUMENTS UP TO DATE THROUGH OCTOBER 13, 2020, THE PEOPLE ARE UNAWARE OF ANY PENDING AND OR SUBSTANTIATED CCRB ALLEGATIONS AGAINST THIS OFFICER.**

**SEE ATTACHMENT BELOW**

Eric Gonzalez  
District Attorney  
Kings County

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 2

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

-against-

██████████  
Defendant.

**DECISION AND ORDER**  
IND NO.: 7661-2016

-----X  
MATTHEW A. SCIARRINO, JR., J.

The defendant, ██████████, is charged with Criminal Possession of a Weapon in the Second Degree (PL § 265.03[3]) and other related charges. On December 14, 2016, the court held a *Dunaway/Huntley/Mapp* hearing. Both the People and the defendant submitted written memoranda of law, which the court considered. The court makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

At the hearing, the People presented testimony of Police Officer Johnpaul Zinser ("PO Zinser"). PO Zinser's partner, Sergeant Fana, did not testify. The defendant and his mother, ██████████, testified for the defense. The court finds the defendant's testimony to be credible and in light of same, does not find PO Zinser's testimony to be credible.

PO Zinser testified that on September 7, 2016, he was on patrol with Sergeant Fana within the confines of the 88<sup>th</sup> Precinct. He stated that he patrolled in an unmarked car, but while wearing a uniform. At the time, it was raining. At approximately 1:53 AM at Clifton Place and Grand Avenue, which was a known drug location, PO Zinser stated that he observed a male, medium height with a white shirt, later identified as Luis Flores, standing outside of a 2016 Ford Fusion with North Carolina plates. PO Zinser proceeded around the block and when he returned, parked his car behind the car and observed a different male, later identified as the defendant, outside attempting to gauge how far the car was from a fire hydrant. He also testified that he observed Mr. Flores inside the car "breaking out marihuana." He stated that he approached the defendant at which time the defendant started saying "I'm sorry" repeatedly. PO Zinser testified that he

placed the defendant in handcuffs "to calm him down." Yet, despite the defendant being in handcuffs, PO Zinser also testified that he would have been free to go. He also testified that he asked the defendant if there were any drugs or weapons in the car to which the defendant said "si." He testified that Sergeant Fana brought Flores over to him and that after looking into the vehicle, stated "92" which meant to make an arrest. PO Zinser testified that Sergeant Fana told him to look inside the vehicle at which point PO Zinser claims that he looked into the car using a flashlight and observed a black firearm behind the driver's seat on the ground. He also stated that he observed marihuana on the center console. After the defendant was arrested he was brought back to the precinct where he gave a Mirandized videotaped statement. He stated in sum and substance that he legally purchased the gun elsewhere and kept it when he came to New York for protection.

The defendant also testified. His account differs in that he stated that PO Zinser and Sergeant Fana parked their car in front of the defendant's car. He also testified that PO Zinser approached him with his gun drawn and told him to come to him while Sergeant Fana screamed "freeze motherfucker" at [REDACTED]. He further testified that Sergeant Fana then conducted a full search of the vehicle and recovered the firearm from *under* the driver's seat, not behind the driver's seat. He also testified that he was interviewed twice in addition to the recorded interview. The defendant's mother testified to introduce a demonstrative photo a Ford Fusion comparable to the one that the defendant was driving.

#### CONCLUSIONS OF LAW

At a *Mapp* hearing, the People have the burden of showing the legality of the police conduct (*People v. Whitehurst*, 25 NY2d 389 [1969]). Only after the People have met their burden, does the burden shift to the defendant to show the illegality of the police conduct by a preponderance of the evidence.

In order to determine whether or not the firearm was lawfully seized from the defendant, the court must conduct an analysis under *People v. Debour*, (40 NY2d 210 [1976]). In *Debour*, the court set forth the four permissible levels of police intrusion and the knowledge required to reach each level. At the first level of intrusion, the police are allowed to approach to request information of a non-criminal and non-threatening manner. To reach this level of inquiry, the police need only demonstrate an objective credible reason to approach and ask questions (*see*

*People v. Hollman*, 79 NY2d 181 [1992]). The second level of intrusion requires that the police have a founded suspicion that criminal activity is afoot. At this level, the police can ask questions of an accusatory nature or that would lead one to reasonably believe that he is suspected of a crime (*Id.*) At the third level, the police must have reasonable suspicion to believe that a person is committing, has committed or is about to commit a crime, in order to forcibly detain and conduct a frisk for their own safety – a so called “Terry stop.” (See *Terry v. Ohio* 392 US 1 [1968]). Finally, at the last level, the police may arrest and conduct a search incident to arrest if they have probable cause to believe the defendant has committed a crime (*Debour, supra* at 223).

This court finds the testimony of the People’s sole witness, PO Zinser, to be less than credible. Notably, his testimony that he parked his car behind the defendant’s car, thereby allowing a clear escape route in a drug prone location, is not logical or believable. Furthermore PO Zinser’s assertion that he put the defendant in handcuffs to calm him down and that he would have been free to go is not believable. As the court does not find the People’s sole witness to be credible, the People have failed in their burden to show the legality of the conduct. On the other hand, the court finds the defendant’s testimony as to the events to be credible and therefore finds that the police seizure of the firearm was the product of an illegal search of the vehicle conducted without probable cause.

As such, the firearm and the defendant’s statement must be suppressed as fruit of the poisonous tree of the illegal search (see *Wong Sun v. United States*, 371 US 471 [1963]).

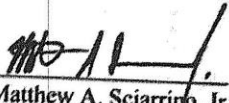
Accordingly, it is hereby:

ORDERED, that the defendant’s motion to suppress the physical evidence seized is granted; and it is further

ORDERED, that the defendant’s motion to suppress the defendant’s statement is granted.

This opinion shall constitute the decision and order of the court.

Dated: January 10, 2017

  
Matthew A. Sciarrino, Jr.  
Acting Justice, Supreme Court